

REMARKS

Applicant acknowledges with appreciation the recognition that claims 5, 6, 17, and 28 contain allowable subject matter. Applicant has not at this time, however, rewritten such claims in independent form, as suggested in the Office Action, but rather submits the arguments establishing allowability of the independent claims.

Claims 1-4, 15, 16, 18-23, 25, and 26 have been rejected under Section 103 based on United States Patent Number 4,801, 054 (Nycz) in view of United States Patent Number 4,795,043 (Odet). Applicant respectfully requests reconsideration of the above rejection, as, *inter alia*, to combine the references would be contrary to the express teaching therein.

In this regard, Nycz teaches that "it is an object . . . to provide a water tight molded plastic dispensing closure," and further teaches "to provide a . . . closure which is water tight during the spray cooling of a package at an elevated temperature . . ., in spite of the partial vacuum which will inherently develop within the closure during such spray cooling" (Nycz, col. 2, lines 34-37).

The Office Action acknowledges that Nycz fails to teach an elongated spout, as recited in Applicant's claim 1, but cites Odet for the elongated spout feature. The Office Action suggests, as apparent motivation to combine, that combining the references would aid in spreading the dispensed material from the associated container. (Office Action, section 4). The Office Action, however, ignores that sealing an elongated orifice is inherently more difficult than sealing a circular spout, and, therefore, employing an elongated orifice would be contrary to the express object of Nycz -- water tight sealing.

but
not
impossible

In this regard, an elongated orifice provides an increased perimeter compared with a circular spout (which apparently is taught in Nycz), and, therefore, inherently provides a greater sealing distance or sealing area. Thus, for any given seal configuration and pressure differential, an elongated orifice would be subject to more leakage than the circular orifice disclosed in Nycz. Further, because of dimensional variations, forming sealing surfaces that accurately, repeatedly, and sufficiently achieve sealing over commercially produced closures is more difficult for an elongated orifice than for a circular orifice. For example, sealing opposing ends of an elongated orifice requires more accurate positioning of the sealing surfaces than those of a circular orifice (for example, it is more difficult to hold tight tolerances over an orifice that is one inch long than for one that is only, say, 0.2 inches diameter).

Further, Nycz not only includes a first sealing configuration (that is, sealing fins 40, 140 and 42, 142 engage dispensing spout 32, 132), but also discloses a second configuration (that is, sealing fin 46, 146) disposed between *the upper portion* of top panel 22, 122 and cover portion 18. Thus, considering that two seals are employed to inhibit leakage through its spout and the stated importance to its object of water tightness, modifying Nycz to employ a more difficult or inferior sealing configuration would be contrary to the express object of Nycz.

Moreover, Odet's closure apparently altogether lacks a seal between its spout orifice flange 29 and perforation element 18, as shown in Figure 8, until deformable part 3 is depressed to perforate lid 9 (that is, Odet such a seal upon applying the closure and during shipping). However, Nycz expressly states its object of water-tightness is "during the spray cooling of a package" – that is, just after filling and prior to any possible

opening by a consumer. Thus, Odet provides an apparently unsealed spout 28 during the period in which Nycz strives for improved sealing. In this regard, modifying Nycz with the teaching of Odet requires impermissible changes to the Odet reference for which there would be no incentive. Applicant submits that the cited combination is impermissible, and requests favorable reconsideration of the Section 103 rejections.

Applicant also submits that claim 19, which recites that “the orifice is a slot including substantially parallel opposing sides and *curved ends therebetween*,” is neither taught nor suggested by the cited references. Rather, Odet expressly teaches a rectangular opening. Applicant submits that claim 19 is further patentably distinct from the cited art.

Claim 2, which has also been rejected based on the combination of Nycz and Odet, recites an “annular seal extending downwardly from an underside of the deck.” As explained above, Nycz’s sealing fin 146 does not extend *downwardly* from top panel 22. Odet has no corresponding structure, and thus the rejection of claim 2 based on Nycz and Odet is inappropriate. However, Applicant’s claim 24, which recites that “the annular seal includes a projection including an angular tip formed thereon that deforms a portion of the liner,” is rejected based on a combination of Nycz and Odet, and further in view of United States Patent Number 4,793,501 (Beck).

Applicant notes that claim 24, which recites “a projection . . . that deforms a portion of the liner,” was objected to because of an inadvertent typographical error. The present amendment makes it clear that a portion of the liner deforms, which feature is neither taught nor suggested by Beck. The amendment to claim 24 does not change the scope of claim 24, but merely makes the claim readable and definite. Thus, Applicant

submits that claim 24, in addition to the reasons cited above, is patentably distinct from the cited art.

Also, a Drawing Change Authorization Request is submitted herewith to address drawing objections in the pending office action. Attached is a marked-up version of the claims showing the changes made by this amendment

CONCLUSION

Applicant submits that the pending claims are in condition for allowance for at least the reasons cited above, and requests favorable reconsideration of the rejections. If the Examiner determines that a telephone conference would further the prosecution of this case, he is invited to telephone the undersigned at his convenience.

Respectfully submitted,



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VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the claims:

15. (Amended) The closure of claim 1 wherein the cap further includes a thumb tab extending outwardly [form] from the sidewall.

24. (Amended) The container package of claim 22 wherein the annular seal includes a projection including an angular tip formed thereon [the] that deforms a portion of the liner.